

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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CALAMAR CAPITAL SERVICES, LLC,
N.A. REALTY FUND II, LLC, and
INDICAL PARTNERS, LLC

Index No. 24-cv-00684-JLS

Plaintiffs,

-against-

**DECLARATION OF
BRENT E. CAREY**

BCMK INVESTMENT HOLDINGS, LLC,
BRENT E. CAREY, AND
INDIGO GLOBAL ADVISORS, LLC

Defendants.

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I, BRENT E. CAREY, declare and state as follows:

1. I am a Managing Member of Defendant of BCMK Investment Holding, LLC and an Officer of Defendant Indigo Global Advisors, LLC, as well as an individual named Defendant in this action (collectively, the “Defendants.”) As such, I am familiar with the facts and circumstances set forth herein either from my personal knowledge.

2. I respectfully submit this Declaration in support of Defendants’ Motion to Dismiss the Complaint of Plaintiffs Calamar Capital Services, LLC, N.A. Realty Fund II, LLC, and IndiCal Partners, LLC in this action and to submit to the Court certain documents referenced in the Complaint. I further submit this Declaration in support of Defendant’s motion to dismiss this case.

3. Annexed hereto as Exhibit “A” is a correct copy of the Amended and Restated Limited Liability Operating Agreement of IGI Partners II, LLC, dated September 1, 2018.

4. Annexed hereto as Exhibit “B” is a true and correct copy of the Amended and Restated Limited Partnership Agreement of Indigo Opportunities Fund II, LLP, dated January 1, 2018.

5. Annexed hereto as Exhibit “C” is a true and correct copy of the Investment Management Agreement dated January 1, 2018, by and between Indigo Opportunities Fund II, L.P. and Defendant Global Advisors, LLC, which is referenced in Plaintiff’s Complaint.

6. Annexed hereto as Exhibit “D” is a true and correct copy of a Letter Agreement, dated January 1, 2018, executed by Plaintiff IndiCal and non-party IGI Partners II, LLC concerning Indigo Opportunities Fund II, LLC.

7. Annexed hereto as Exhibit “E” is a true and correct copy of the IndiCal Partners LLC Subscription Booklet for Limited Partnership Interests in Indigo Opportunities Fund II, L.P.

8. Annexed hereto as Exhibit “F” are a Default Notice dated April 26, 2018, and Notices of Capital Calls directed to Brandon Rath of IndiCal Partners, LLC at IndiCal’s California office in Corona del Mar, California.

9. Both Defendants BCMK and IGA are Delaware limited liability companies. Each has a principal place of business in Long Beach, California. Neither BCMK nor IGA maintains any offices in the State of New York. At no time was BCMK or IGA ever registered to do business in New York.

10. I have no connection to the State of New York in that I do not work in New York, do not transact business in New York, own no property in New York, and I have never resided in New York.

11. In this action, I am aware that Plaintiffs vaguely allege at paragraph “14” of the Complaint - - with no supporting details - - that in 2017 and 2018 I purportedly traveled to Calamar’s offices in Niagara County, New York to solicit investors for Fund II (Compl. at ¶14).

12. However, I never traveled to Calamar’s offices in Niagara County, New York in 2017 and 2018 to solicit investors or for any other purposes. Nor did I travel anywhere else in the State of New York in 2017 or 2018 to meet with any of the Plaintiffs or their representatives. It was not until January 27-January 29, 2019 - - one full year after the transactions alleged in the Complaint had been consummated that I visited Buffalo, New York.

13. In connection with the agreements referenced in the Complaint and IndiCal’s investment in, my first meeting with anyone affiliated with any of the Plaintiffs was a meeting I had with Ken Franasiak and Brandon Rath in May, 2017 in the State of California.

14. Thereafter, I continued to speak with Brandon Rath, and I also spoke with others at IndiCal including Damon Wojciechowski; however, I was not in the State of New York for any discussions.

15. As reflected in the Letter Agreement dated January 1, 2018 (Exhibit “D”) and the Subscription Booklet (Exhibit “E”), both documents related to the transaction were executed by Brandon Rath, on behalf of IndiCal, in the State of California through Indigo’s California offices located in Corona del Mar.

16. Likewise, after the agreement with IndiCal, continuing communications with IndiCal, including a Notice of Default and Notice of Capital Calls (Exhibit “E”), were directed to IndiCal’s California offices, care of Brandon Rath, resident in IndiCal’s California offices.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and information.

Executed this 29th day of July, 2024.

s/ *Brent E. Carey*
BRENT E. CAREY